

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 7th day of May, two thousand eight.

PRESENT:

HON. RICHARD J. CARDAMONE,
HON. GUIDO CALABRESI,
HON. REENA RAGGI,

Circuit Judges.

YIU MING LIU,
Petitioner,

v.

UNITED STATES ATTORNEY GENERAL,
Respondent.

07-3887-ag
NAC

FOR PETITIONER: Romben Aquino, New York, New York.

1 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
2 **Assistant Attorney General; Linda S.**
3 **Wernery, Assistant Director; Kelly**
4 **J. Walls, Trial Attorney, Office of**
5 **Immigration Litigation, U.S.**
6 **Department of Justice, Washington,**
7 **D.C.**
8

9 UPON DUE CONSIDERATION of this petition for review of a
10 decision of the Board of Immigration Appeals ("BIA"), it is
11 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
12 review is DENIED.

13 Yiu Ming Liu, a native and citizen of the People's
14 Republic of China, seeks review of an August 20, 2007 order
15 of the BIA affirming the March 23, 2001 decision of
16 Immigration Judge ("IJ") Mitchell Levinsky, denying his
17 application for asylum and withholding of removal. *In re Yiu*
18 *Ming Liu*, No. A72 054 505 (B.I.A. Aug. 20, 2007), *aff'g* No.
19 A72 054 505 (Immig. Ct. N.Y. City Mar. 23, 2001). We assume
20 the parties' familiarity with the underlying facts and
21 procedural history of this case.

22 When the BIA issues an independent decision on remand
23 from this Court, we should review the BIA's decision alone.
24 *See Belortaja v. Gonzales*, 484 F.3d 619, 623 (2d Cir. 2007).
25 We review the agency's factual findings under the
26 substantial evidence standard, treating them as "conclusive
27 unless any reasonable adjudicator would be compelled to
28 conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); *see*,

1 e.g., *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir.
2 2004), overruled in part on other grounds by *Shi Liang Lin*
3 *v. U.S. Dep't of Justice*, 494 F.3d 296 (2d Cir. 2007) (en
4 banc). We will vacate and remand for new findings, however,
5 if the agency's reasoning or its fact-finding process was
6 sufficiently flawed. *Cao He Lin v. U.S. Dep't of Justice*,
7 428 F.3d 395, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359
8 F.3d 121, 129 (2d Cir. 2004). We review *de novo* questions
9 of law and the application of law to undisputed fact. See,
10 e.g., *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir.
11 2003).

12 As the BIA found, even assuming his credibility, Liu is
13 ineligible as a matter of law for the relief he sought based
14 on his wife's alleged forced sterilization. In *Shi Liang*
15 *Lin*, we held that 8 U.S.C. § 1101(a)(42) "does not extend
16 automatic refugee status to spouses or unmarried partners of
17 individuals § 601(a) [of the Illegal Immigration Reform and
18 Immigrant Responsibility Act of 1996 (amending 8 U.S.C. §
19 1101(a)(42))] expressly protects." 494 F.3d at 300. This
20 holding is dispositive of Liu's petition for review.
21 Indeed, we have since held that a claim based solely on a
22 spouse or unmarried partner's forced abortion or
23 sterilization is "doomed." *Gui Yin Liu v. INS*, 508 F.3d

1 716, 720 (2d Cir. 2007). While an individual may establish
2 eligibility for relief based on his own "other resistance"
3 to a coercive population control policy, 8 U.S.C.
4 § 1101(a)(42), Liu has made no such claim.

5 To the extent he argues that we should reconsider our
6 en banc decision in *Shi Liang Lin*, and read that decision
7 "narrowly" to include only fiancées and boyfriends, or
8 remand his case for further consideration of the
9 implications of *Shi Liang Lin*, we have no authority to do
10 so. See *Gold v. Feinberg*, 101 F.3d 796, 801 (2d Cir. 1996)
11 (stating that a holding of our Court "can only be overruled
12 by this Court sitting in banc or by a decision of the
13 Supreme Court").

14 For the foregoing reasons, the petition for review is
15 DENIED. As we have completed our review, any stay of
16 removal that the Court previously granted in this petition
17 is VACATED, and any pending motion for a stay of removal in
18 this petition is DISMISSED as moot. Any pending request for
19 oral argument in this petition is DENIED in accordance with
20 Federal Rule of Appellate Procedure 34(a)(2), and Second
21 Circuit Local Rule 34(b).

22 FOR THE COURT:
23 Catherine O'Hagan Wolfe, Clerk
24

25 By: _____
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